

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Appleton, Wisconsin)

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MB Docket No. 04-185
RM-10860

JAN 31 2005

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 14, 2005

Released: January 28, 2005

By the Chief, Video Division:

1. At the request of Ace TV, Inc. ("Ace"), licensee of station WACY(TV), the Commission has before it the Notice of Proposed Rule Making, 19 FCC Rcd 8593 (2004), proposing the substitution of DTV channel 27c for DTV channel 59 at Appleton.¹ Ace filed responsive comments.² 3G COMM, LLC ("3G") and State of Wisconsin-Education Communications Board ("WECB") filed comments.³

2. 3G filed comments supporting the channel change at Appleton. 3G states that it is a successful bidder for a Lower 700 MHz C-Block license in the Appleton CMA. 3G submits it intends to provide advanced wireless services, such as high speed wireless Internet access, to businesses and residential customers in Appleton and surrounding rural areas. 3G contends that the grant of Ace's proposal will permit Ace to replace its out-of-core channel with an in-core channel while facilitating the clearing of the lower 700 MHz band for new uses.

¹ In response to the *Notice of Proposed Rule Making (Green Bay, Wisconsin)*, in MM Docket No. 01-334, 16 FCC Rcd 21923 (2001), Ace filed a counterproposal requesting the substitution of DTV channel 39 for WACY-DT's assigned DTV channel 59 at Appleton. Subsequently, Ace proposed alternate DTV channel 27c for its digital operations at Appleton. Since there was no mutually exclusivity between the allotment of DTV channel 39 at Green Bay and the use of DTV channel 27c at Appleton, the Commission treated Ace's alternate proposal as a new petition for rule making and issued a separate *Notice*.

² Ace filed a motion for leave to accept comments in Support of this Notice of Proposed Rule Making. The Motion stated that the comments were due to be filed by July 12, 2004, but through an inadvertence, the comments were not filed until July 14, 2004, two days after the close of the comment period. Ace late-filed comments will be accepted since this proceeding is uncontested and their acceptance will permit Ace to restate its expression of interest in the applying for DTV channel 27c. See *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988).

³ In its comments, WECB states that it does not object to Ace's use of channel 27c at Appleton, but opposes the channel substitution to the extent that it presupposes the outcome of a related proposal filed by CBS Broadcasting Inc. in MM Docket No. 01-334 at *Green Bay, Wisconsin*. On October 12, 2004, the Commission adopted CBS's proposal to substitute DTV channel 39c for station WACY-DT's assigned DTV channel 56 at Green Bay. See *Report and Order (Green Bay, Wisconsin)*, 19 FCC Rcd 19719 (2004). We need not discuss WECB's comments further, in light of the outcome of that proceeding.

3. We believe the public interest would be served by substituting DTV channel 27c for DTV channel 59 since it will permit WACY-DT to operate on an in-core channel. DTV channel 27c can be allotted to Appleton, Wisconsin, as proposed, in compliance with the principle community coverage requirement of Section 73.625(a) at coordinates 44-21-30 N. and 87-58-48 W. Since the community of Appleton is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WACY-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
WI Appleton	27c	50	336	835

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 14, 2005, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Appleton, Wisconsin	27c

5. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Ace TV, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 27c in lieu of DTV Channel 59 for station WACY-DT.

6. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, copy of this Order to the following:

David D. Oxenford, Esq.
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau